

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_ BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC INFORMATION; EXEMPTING FROM PUBLIC  
DISCLOSURE CERTAIN INFORMATION CONCERNING PUBLIC SECURITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-15-1 NMSA 1978 (being Laws 1974,  
Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN  
MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

A. In recognition of the fact that a representative  
government is dependent upon an informed electorate, it is  
declared to be public policy of this state that all persons are  
entitled to the greatest possible information regarding the  
affairs of government and the official acts of those officers  
and employees who represent them. The formation of public  
policy or the conduct of business by vote shall not be

.208940.1SA

underscored material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material]~~ = delete

1 conducted in closed meeting. All meetings of any public body  
2 except the legislature and the courts shall be public meetings,  
3 and all persons so desiring shall be permitted to attend and  
4 listen to the deliberations and proceedings. Reasonable  
5 efforts shall be made to accommodate the use of audio and video  
6 recording devices.

7 B. All meetings of a quorum of members of any  
8 board, commission, administrative adjudicatory body or other  
9 policymaking body of any state agency or any agency or  
10 authority of any county, municipality, district or political  
11 subdivision, held for the purpose of formulating public policy,  
12 including the development of personnel policy, rules,  
13 regulations or ordinances, discussing public business or taking  
14 any action within the authority of or the delegated authority  
15 of any board, commission or other policymaking body are  
16 declared to be public meetings open to the public at all times,  
17 except as otherwise provided in the constitution of New Mexico  
18 or the Open Meetings Act. No public meeting once convened that  
19 is otherwise required to be open pursuant to the Open Meetings  
20 Act shall be closed or dissolved into small groups or  
21 committees for the purpose of permitting the closing of the  
22 meeting.

23 C. If otherwise allowed by law or rule of the  
24 public body, a member of a public body may participate in a  
25 meeting of the public body by means of a conference telephone

.208940.1SA

underscoring material = new  
~~[bracketed material] = delete~~

1 or other similar communications equipment when it is otherwise  
2 difficult or impossible for the member to attend the meeting in  
3 person; provided that each member participating by conference  
4 telephone can be identified when speaking, all participants are  
5 able to hear each other at the same time and members of the  
6 public attending the meeting are able to hear any member of the  
7 public body who speaks during the meeting.

8 D. Any meetings at which the discussion or adoption  
9 of any proposed resolution, rule, regulation or formal action  
10 occurs and at which a majority or quorum of the body is in  
11 attendance, and any closed meetings, shall be held only after  
12 reasonable notice to the public. The affected body shall  
13 determine at least annually in a public meeting what notice for  
14 a public meeting is reasonable when applied to that body. That  
15 notice shall include broadcast stations licensed by the federal  
16 communications commission and newspapers of general circulation  
17 that have provided a written request for such notice.

18 E. A public body may recess and reconvene a meeting  
19 to a day subsequent to that stated in the meeting notice if,  
20 prior to recessing, the public body specifies the date, time  
21 and place for continuation of the meeting and, immediately  
22 following the recessed meeting, posts notice of the date, time  
23 and place for the reconvened meeting on or near the door of the  
24 place where the original meeting was held and in at least one  
25 other location appropriate to provide public notice of the

.208940.1SA

underscored material = new  
[bracketed material] = delete

1 continuation of the meeting. Only matters appearing on the  
2 agenda of the original meeting may be discussed at the  
3 reconvened meeting.

4 F. Meeting notices shall include an agenda  
5 containing a list of specific items of business to be discussed  
6 or transacted at the meeting or information on how the public  
7 may obtain a copy of such an agenda. Except in the case of an  
8 emergency or in the case of a public body that ordinarily meets  
9 more frequently than once per week, at least seventy-two hours  
10 prior to the meeting, the agenda shall be available to the  
11 public and posted on the public body's [~~web site~~] website, if  
12 one is maintained. A public body that ordinarily meets more  
13 frequently than once per week shall post a draft agenda at  
14 least seventy-two hours prior to the meeting and a final agenda  
15 at least thirty-six hours prior to the meeting. Except for  
16 emergency matters, a public body shall take action only on  
17 items appearing on the agenda. For purposes of this  
18 subsection, "emergency" refers to unforeseen circumstances  
19 that, if not addressed immediately by the public body, will  
20 likely result in injury or damage to persons or property or  
21 substantial financial loss to the public body. Within ten days  
22 of taking action on an emergency matter, the public body shall  
23 report to the attorney general's office the action taken and  
24 the circumstances creating the emergency; provided that the  
25 requirement to report to the attorney general is waived upon

.208940.1SA

underscored material = new  
~~[bracketed material] = delete~~

1 the declaration of a state or national emergency.

2 G. The board, commission or other policymaking body  
3 shall keep written minutes of all its meetings. The minutes  
4 shall include at a minimum the date, time and place of the  
5 meeting, the names of members in attendance and those absent,  
6 the substance of the proposals considered and a record of any  
7 decisions and votes taken that show how each member voted. All  
8 minutes are open to public inspection. Draft minutes shall be  
9 prepared within ten working days after the meeting and shall be  
10 approved, amended or disapproved at the next meeting where a  
11 quorum is present. Minutes shall not become official until  
12 approved by the policymaking body.

13 H. The provisions of Subsections A, B and G of this  
14 section do not apply to:

15 (1) meetings pertaining to issuance,  
16 suspension, renewal or revocation of a license, except that a  
17 hearing at which evidence is offered or rebutted shall be open.  
18 All final actions on the issuance, suspension, renewal or  
19 revocation of a license shall be taken at an open meeting;

20 (2) limited personnel matters; provided that  
21 for purposes of the Open Meetings Act, "limited personnel  
22 matters" means the discussion of hiring, promotion, demotion,  
23 dismissal, assignment or resignation of or the investigation or  
24 consideration of complaints or charges against any individual  
25 public employee; provided further that this paragraph is not to

.208940.1SA

underscored material = new  
~~[bracketed material] = delete~~

1 be construed as to exempt final actions on personnel from being  
2 taken at open public meetings, nor does it preclude an  
3 aggrieved public employee from demanding a public hearing.  
4 Judicial candidates interviewed by any commission shall have  
5 the right to demand an open interview;

6 (3) deliberations by a public body in  
7 connection with an administrative adjudicatory proceeding. For  
8 purposes of this paragraph, "administrative adjudicatory  
9 proceeding" means a proceeding brought by or against a person  
10 before a public body in which individual legal rights, duties  
11 or privileges are required by law to be determined by the  
12 public body after an opportunity for a trial-type hearing.  
13 Except as otherwise provided in this section, the actual  
14 administrative adjudicatory proceeding at which evidence is  
15 offered or rebutted and any final action taken as a result of  
16 the proceeding shall occur in an open meeting;

17 (4) the discussion of personally identifiable  
18 information about any individual student, unless the student or  
19 the student's parent or guardian requests otherwise;

20 (5) meetings for the discussion of bargaining  
21 strategy preliminary to collective bargaining negotiations  
22 between the policymaking body and a bargaining unit  
23 representing the employees of that policymaking body and  
24 collective bargaining sessions at which the policymaking body  
25 and the representatives of the collective bargaining unit are

.208940.1SA

underscored material = new  
[bracketed material] = delete

1 present;

2 (6) that portion of meetings at which a  
3 decision concerning purchases in an amount exceeding two  
4 thousand five hundred dollars (\$2,500) that can be made only  
5 from one source is discussed and that portion of meetings at  
6 which the contents of competitive sealed proposals solicited  
7 pursuant to the Procurement Code are discussed during the  
8 contract negotiation process. The actual approval of purchase  
9 of the item or final action regarding the selection of a  
10 contractor shall be made in an open meeting;

11 (7) meetings subject to the attorney-client  
12 privilege pertaining to threatened or pending litigation in  
13 which the public body is or may become a participant;

14 (8) meetings for the discussion of the  
15 purchase, acquisition or disposal of real property or water  
16 rights by the public body;

17 (9) those portions of meetings of committees  
18 or boards of public hospitals where strategic and long-range  
19 business plans or trade secrets are discussed; ~~[and]~~

20 (10) that portion of a meeting of the gaming  
21 control board dealing with information made confidential  
22 pursuant to the provisions of the Gaming Control Act; and

23 (11) those portions of meetings addressing:

24 (a) security assessments or deployments  
25 of information resources technology;

underscored material = new  
[bracketed material] = delete

1                                    (b) network security information; or  
2                                    (c) the deployment, or a specific  
3 occasion for the implementation, of security personnel,  
4 critical infrastructure or security devices.

5                    I. If any meeting is closed pursuant to the  
6 exclusions contained in Subsection H of this section:

7                                    (1) the closure, if made in an open meeting,  
8 shall be approved by a majority vote of a quorum of the  
9 policymaking body; the authority for the closure and the  
10 subject to be discussed shall be stated with reasonable  
11 specificity in the motion calling for the vote on a closed  
12 meeting; the vote shall be taken in an open meeting; and the  
13 vote of each individual member shall be recorded in the  
14 minutes. Only those subjects announced or voted upon prior to  
15 closure by the policymaking body may be discussed in a closed  
16 meeting; or

17                                    (2) if a closure is called for when the  
18 policymaking body is not in an open meeting, the closed meeting  
19 shall not be held until public notice, appropriate under the  
20 circumstances, stating the specific provision of the law  
21 authorizing the closed meeting and stating with reasonable  
22 specificity the subject to be discussed is given to the members  
23 and to the general public.

24                    J. Following completion of any closed meeting, the  
25 minutes of the open meeting that was closed or the minutes of

underscored material = new  
[bracketed material] = delete

1 the next open meeting if the closed meeting was separately  
2 scheduled shall state that the matters discussed in the closed  
3 meeting were limited only to those specified in the motion for  
4 closure or in the notice of the separate closed meeting. This  
5 statement shall be approved by the public body under Subsection  
6 G of this section as part of the minutes."

7 SECTION 2. Section 14-2-1 NMSA 1978 (being Laws 1947,  
8 Chapter 130, Section 1, as amended) is amended to read:

9 "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

10 A. Every person has a right to inspect public  
11 records of this state except:

12 (1) records pertaining to physical or mental  
13 examinations and medical treatment of persons confined to an  
14 institution;

15 (2) letters of reference concerning  
16 employment, licensing or permits;

17 (3) letters or memoranda that are matters of  
18 opinion in personnel files or students' cumulative files;

19 (4) law enforcement records that reveal  
20 confidential sources, methods, information or individuals  
21 accused but not charged with a crime. Law enforcement records  
22 include evidence in any form received or compiled in connection  
23 with a criminal investigation or prosecution by a law  
24 enforcement or prosecuting agency, including inactive matters  
25 or closed investigations to the extent that they contain the

.208940.1SA

underscored material = new  
[bracketed material] = delete

1 information listed in this paragraph;

2 (5) as provided by the Confidential Materials  
3 Act;

4 (6) trade secrets, attorney-client privileged  
5 information and long-range or strategic business plans of  
6 public hospitals discussed in a properly closed meeting;

7 (7) tactical response plans or procedures  
8 prepared for or by the state or a political subdivision of the  
9 state, the publication of which could reveal specific  
10 vulnerabilities, risk assessments or tactical emergency  
11 security procedures that could be used to facilitate the  
12 planning or execution of a terrorist attack; [~~and~~]

13 (8) confidential electronic network security  
14 information:

15 (a) revealing components, including  
16 passwords, personal identification numbers, access codes and  
17 encryption, of a public body's electronic network security  
18 system;

19 (b) collected, assembled or maintained  
20 by or for a public body to prevent, detect or investigate  
21 criminal or fraudulent activity; or

22 (c) concerning an assessment, made by,  
23 made for or maintained by a public body, of the vulnerability  
24 of the network to criminal activity; and

25 [~~(8)~~] (9) as otherwise provided by law.

.208940.1SA

underscoring material = new  
~~[bracketed material]~~ = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

B. Protected personal identifier information  
contained in public records may be redacted by a public body  
before inspection or copying of a record. The presence of  
protected personal identifier information on a record does not  
exempt the record from inspection. Unredacted records that  
contain protected personal identifier information shall not be  
made available on publicly accessible [~~web sites~~] websites  
operated by or managed on behalf of a public body."